

1 APPEARANCES (Cont'd.):

2 MS. ERIN L. ZIAJA

77 West Wacker

3 Chicago, Illinois

4 appearing for Peoples Gas, Light and
Coke Company;

5

6

7

8

9

10

11

12

13

14

15

16

17

18 SULLIVAN REPORTING COMPANY, by

Patricia Wesley, CSR, RPR

19 License No. 084-002170

20

21

22

1 JUDGE BRODSKY: Pursuant to the authority of the
2 Illinois Commerce Commission, I now call Docket
3 04-0577 and, concurrently, 04-0578. These are
4 complaints by Mr. E. Jerome Malry vs. The Peoples
5 Gas, Light and Coke Company.

6 May I have appearances for the record,
7 please

8 MS. ZIAJA: Erin L. Ziaja. I'm representing the
9 respondent, Peoples Gas, 77 West Wacker Drive in
10 Chicago.

11 MS. TRIPLETT: Rosemary Triplett representing the
12 petitioner, T-r-i-p-l-e-t-t.

13 JUDGE BRODSKY: Address, phone number.

14 MS. TRIPLETT: Post Office Box 23501, 60623;
15 Phone No. 773-521-3115.

16 JUDGE BRODSKY: Okay. All right. First of all,
17 these complaints appear to have attached to them --
18 attached to the cover sheet something called a
19 Statement of Complaint and Request for Leave. Okay.
20 On this, Ms. Triplett, was that written by you?

21 MS. TRIPLETT: I'm sorry?

22 JUDGE BRODSKY: The complaint attached to the

1 front sheet there was something entitled, "Statement
2 of Complaint and Request for Leave.

3 MS. TRIPLETT: Yes.

4 JUDGE BRODSKY: Were those written by you?

5 MS. TRIPLETT: Yes.

6 JUDGE BRODSKY: Okay. If that's the case, it
7 looks to me like they are lacking in the signature
8 block so if you would provide that for me.

9 MS. TRIPLETT: Okay. Both of them, 04-05- --

10 JUDGE BRODSKY: Yes. Why don't we do that now
11 actually; otherwise, there's really nothing to
12 proceed on since that's the bulk of the complaint.

13 MS. TRIPLETT: So the verification is not -- even
14 though the sheet is -- the complaint is signed, let
15 me just make sure I'm understanding you correctly.

16 JUDGE BRODSKY: All right. There's something --
17 there's the affidavit on Mr. Malry attached to the
18 main form. If this appears to be the bulk of the
19 complaint -- of the substance of the complaint
20 written by you, it should be signed by you.

21 MS. TRIPLETT: And that's going to be on behalf
22 of Mr. Malry, so I should have him, in effect --

1 I'll just bring them back and have him sign these.

2 JUDGE BRODSKY: Well, he's made an affidavit to
3 the effect that he's read it and understand it, and
4 et cetera, but it's your complaint ,in part, if
5 you've written the complaint. You know what --

6 MS. TRIPLETT: I can, you know, so it's on the
7 record. How do you want me to do this?

8 JUDGE BRODSKY: Now that I think about it, let's
9 do it on a blank sheet. You can just put on the
10 document the title submitted by, okay, because -- is
11 that all right with you?

12 MS. TRIPLETT: Well, I just can submit it by the
13 attached.

14 JUDGE BRODSKY: Okay. These will be filed as
15 signatures with the Chief Clerk's Office.

16 Okay. Moving on, so then based on the
17 initial filings, is there anything initially from
18 the company, Ms. Ziaja.

19 MS. ZIAJA: I would like to bring to your
20 attention actually three things, your Honor. First
21 of all, there's been no informal complaint filed for
22 these two complaints.

1 Additionally, the property that is at
2 4230 South Michigan is currently pending before
3 another ALJ here. She issued a proposed order,
4 brief on exceptions. Everybody filed, and I filed a
5 reply, and we're awaiting an order that deals with
6 the same property. That was for 4230 South
7 Michigan. I should clarify the 4344 South Clarendon
8 property was actually the subject matter of a
9 complaint that was filed in 2003, which was
10 dismissed with prejudice by this forum on June 23,
11 2004.

12 JUDGE BRODSKY: Okay. What are the docket
13 numbers of those other complaints?

14 MS. ZIAJA: 4344 North Clarendon. The docket
15 number, as is currently filed, is 04-0577 and it was
16 filed previously as 03-0519. That was actually part
17 of the consolidated docket which included two other
18 properties.

19 JUDGE BRODSKY: What were the other properties in
20 that --

21 MS. ZIAJA: Sure.

22 JUDGE BRODSKY: -- or the other docket numbers?

1 MS. ZIAJA: Docket Nos. 03-0518 and 03-0520, and,
2 unfortunately, I have the orders, but I don't
3 have -- the other two property numbers -- and the
4 property that is currently at 4230 South Michigan
5 with the ICC Docket No. 04-0578 was filed as Docket
6 04-0369, and that's the one that we're waiting the
7 ALJ's ruling on.

8 JUDGE BRODSKY: You said there was a proposed
9 order.

10 MS. ZIAJA: That is 04-0369. There's been a
11 proposed order that was issued. I think it was
12 May 27, 2004. I'm sorry. It was June 25, 2004.

13 JUDGE BRODSKY: When was the final order entered
14 in the 03-0519 and others I suppose?

15 MS. ZIAJA: That was issued on June 23, 2004.

16 JUDGE BRODSKY: June 23rd? Okay. Anything
17 further?

18 MS. ZIAJA: No.

19 JUDGE BRODSKY: Okay. You want to respond.

20 MS. TRIPLETT: Well, just it's -- this is a
21 separate issue. It's not the same issue as it was
22 in those proceedings. Specifically, 4344 North

1 Clarendon, which is now part of a TRO in front of
2 the Circuit Court regarding a specific issue, that
3 does not relate to the formal filing. If she wants
4 to address it in the motion or something, that's
5 fine.

6 JUDGE BRODSKY: So there's a TRO pending based on
7 an issue that was addressed in 03-0519 or is that
8 separate?

9 MS. TRIPLETT: Separate from --

10 JUDGE BRODSKY: Okay.

11 MS. ZIAJA: That's actually debateable, your
12 Honor. What happened, because of the order
13 dismissing the matter, the disputed amount rolled
14 into the bill that's become payable.

15 MS. TRIPLETT: That's not true.

16 MS. ZIAJA: They brought the complaint to the
17 Circuit Court asking for a temporary restraining --
18 or a preliminary injunction related to disputed
19 amounts, which I believe is slightly over \$27,000 at
20 this point. The judge stayed the proceedings. I
21 shouldn't say stayed the proceedings. We have a
22 motion to dismiss due to be filed with the disputed

1 amount with the Circuit Court and everything is sort
2 of on hold until there's something resolved within
3 the ICC to determine whether or not they are, in
4 fact, liable for charges.

5 JUDGE BRODSKY: So the disputed amount is at the
6 Circuit Court. The TRO was or was not issued?

7 MS. ZIAJA: It was not issued. We were given 21
8 days to respond by filing a motion to dismiss to the
9 motion for a TRO. There was a sort of an agreement
10 between the parties that, you know, if they posted
11 the \$27,000 in bond, which was the disputed amount,
12 we would not terminate service.

13 JUDGE BRODSKY: So the TRO being sought is
14 against the service termination?

15 MS. ZIAJA: Yes.

16 JUDGE BRODSKY: You look like you were
17 disagreeing.

18 MS. TRIPLETT: Well, her issue was -- I'm not
19 disagreeing with her, what's happening with the TRO,
20 no. It's the fact going back to whether or not this
21 particular issue was determined prior to what I'm
22 contending.

1 JUDGE BRODSKY: Okay. So, in other words --
2 okay -- the 27,000 is that the Clarendon address?
3 Is that what we're talking about?

4 MS. ZIAJA: Yes, it is. There is no Circuit
5 Court matter pending as it relates to 4230 South
6 Michigan --

7 JUDGE BRODSKY: Okay.

8 MS. ZIAJA: -- which is the 0578.

9 JUDGE BRODSKY: Let me take a look at this
10 statement.

11 (A brief pause.)

12 All right. So when did this billing
13 dispute start? You are saying as of at least
14 January 8th. Was it -- was that the first instance
15 of the --

16 MS. TRIPLETT: What are you talking about?

17 JUDGE BRODSKY: I'm talking about Clarendon, 4344
18 North Clarendon. This is 04-0577 is the docket
19 number. All right. So you are saying Paragraph 1
20 of your statement complaint as of at least the
21 billing date of January 8, 2004 there's been a
22 disputed amount. Was that the start of the dispute

1 or was it existing beforehand? I don't understand
2 what you mean by as of at least the billing date.

3 MS. TRIPLETT: As of at least the billing date, I
4 believe the documents -- and I didn't bring all my
5 documents. I didn't think I would be arguing that
6 point today -- is that on that date is when we
7 looked back at the records and saw that the \$27,000
8 was not a part of the billing at that time and I
9 think it was on or after June of 2004 is when the
10 disputed amount of \$27,000 was added to the
11 petitioner's bill.

12 JUDGE BRODSKY: In June of 2004?

13 MS. TRIPLETT: Correct.

14 JUDGE BRODSKY: So is that in connection with the
15 order that was entered? Is that your allegation?

16 MS. ZIAJA: My allegation is these are all sort
17 of lumped in together and that a lot of these
18 issues, in particular relating to the 3300 that's
19 mentioned in here, were the subject matter of
20 allegations in the 03-0519 complaint that was
21 dismissed for failure to prosecute, so it's just
22 such a nebulous thing that these could have been

1 addressed and were -- ultimately were suppose to be
2 addressed in the '03 complaint.

3 JUDGE BRODSKY: All right. So what about the
4 335027, Ms. Ziaja, that they're talking about? Is
5 that part of the same group of items or billings
6 that was involved in this -- allegedly involved in
7 this 03-0519 and others?

8 MS. ZIAJA: Yes, and the 4230 complaint actually
9 discusses the 335027 as well, which is the case
10 that's pending in front of Judge Sainsot. I'm sure
11 I'm mispronouncing that name.

12 If you look at the 4230 South Michigan
13 complaint, Section 6, they're talking about transfer
14 and balance of 335027. That was the subject matter
15 of the complaint that she just filed back in May.

16 I guess my issue is the fact that she's
17 had the opportunity -- Mr. Malry had the opportunity
18 to bring these issues in their '03 complaint and
19 then they brought them again in their '04 complaint
20 in front of Judge Sainsot and now here we are again
21 basically rehashing the same exact allegations with
22 the disputed amount which would have been covered in

1 this '03 complaint.

2 JUDGE BRODSKY: Okay. So with respect to that,
3 is this -- this 4230 -- what's your position or
4 response to Ms. Ziaja to that?

5 MS. TRIPLETT: I would prefer to make it in
6 writing so she -- if she wants to put in a motion,
7 then I'll have time to address it. I'll be more
8 than happy.

9 MS. ZIAJA: The other issue there hasn't been an
10 informal complaint that's been filed as to these two
11 new complaints.

12 JUDGE BRODSKY: All right. If you are going to
13 allege that they were already the subject of -- for
14 a formal complaint in another docket, whether
15 resolved or unresolved, the fact is we don't -- I
16 don't want to call it a fact. There's allegations.
17 There's been no informal complaint in these matters.

18 MS. ZIAJA: I'll simply say, your Honor, to the
19 extent she's asserting that she's raising new
20 allegations, that would have had the opportunity to
21 be rehashed, at least examined, in an informal
22 complaint process when we moved for an

1 investigation, but I will -- I recognize the
2 discrepancy in that argument.

3 JUDGE BRODSKY: Okay. So what we are going to do
4 I think -- would it be correct to say that there is
5 an abundance of issues of law and issues related to
6 the pleadings and allegations to be addressed first
7 and that the extent of discovery potentially would
8 be rather minimal? Is that correct at this point?

9 MS. TRIPLETT: I would like to get some
10 discovery. If there's preliminary matters that
11 counsel would like to put in the motion, we can
12 address it there.

13 JUDGE BRODSKY: Okay. I think what we are going
14 to do we better take this one step at a time. Okay.
15 First of all, I think what we'll do is, Ms. Ziaja,
16 why don't you file an answer, and/or any other
17 pleadings you feel are appropriate.

18 MS. ZIAJA: Okay.

19 JUDGE BRODSKY: All right. And within your
20 pleadings, I suppose you'll be discussing the
21 allegations for each of the complaints, as well as
22 if you would analyze what's going on between the

1 three consolidated dockets related to 03-0519 and
2 also with the status of the pending docket that you
3 say exist for the 4230 South Michigan address. All
4 right. So that's step one.

5 Now, obviously, Ms. Triplett, if she
6 makes a motion of some sort, then you'll have an
7 opportunity to respond to that, and if that's the
8 route you go, Ms. Ziaja, and she responds to a
9 motion that you file, you'll have a reply period.

10 Okay. After that, we'll see where we
11 are. I think it's important at this point to get
12 the arguments as to whether these matters are open
13 or closed, whether they're new facts or not, whether
14 they're new issues or not. Obviously, by bringing
15 the complaint, Ms. Triplett, you're sort of
16 representing to us that there are new issues based
17 on a reasonable inquiry on your part.

18 I would expect that the upcoming steps
19 will make those issues clear. After we get all
20 these pleadings in, I'll take an examination of
21 what's been filed and then to the extent that it's
22 necessary, if there are continuing issues, then

1 we'll set a schedule for discovery and potential
2 litigation as to whatever remains or everything --
3 if everything remains. If nothing remains, then,
4 obviously, that step won't be necessary.

5 Now with respect to the pending issue
6 in the Circuit Court, obviously, that is going to
7 take a little bit longer than the three-week period,
8 but I trust that inside of the schedule here you'll
9 be able to make things work and, obviously, these
10 proceedings will be able to be resolved in a manner
11 consistent with whatever is determined in the
12 Circuit Court.

13 My understanding from the discussion
14 today is that these are to proceed and they're not
15 in any way stayed, or mooted, or anything else.

16 MS. ZIAJA: No, and I'm not anticipating any
17 trouble between these proceedings and the Circuit
18 Court proceedings. It's a pretty open-ended order
19 that the judge ruled on, so there shouldn't be any
20 conflict.

21 JUDGE BRODSKY: I will look to both parties to
22 keep me apprised if for some reason something comes

1 up. All right. So with that said, let's take a
2 look at the calendar with some time frames. For
3 scheduling, I suppose we could go off the record.

4 (Off the record.)

5 Let's go back on the record.

6 In terms of there being answers in any
7 motion that they bring, those should all be filed on
8 October 15th. Any response to the motion should be
9 filed by October 29th. Any reply thereto should be
10 filed by November 12th noting for the record that
11 the Commission will be closed on November 11.

12 Now there's three possible outcomes, I
13 suppose, and that is that based on what's filed, the
14 complaint can go forward in its entirety, that at
15 some sort of interim ruling or order could be issued
16 eliminating certain aspects of the complaint or
17 that a proposed order could be determined or
18 circulated -- excuse me -- for a proposed order
19 could be circulated if all of the elements of the
20 complaint are successfully addressed in the motion.

21 With that said, if there are going to
22 be further proceedings, either based on the complete

1 or partial complaint after the November 12th filing,
2 then the matters will be set for a hearing date;
3 otherwise -- well, if part or all of the subject
4 matter is being -- are dismissed, then the proposed
5 order will be circulated and you will have an
6 opportunity to respond to that.

7 So, obviously, at this time it is
8 impossible for me to predict what may or may not
9 happen. These are just the relevant possibilities
10 what might happen, so I suppose at this point I'll
11 look to each party to make their filings by the
12 announced deadlines. I don't see a need to set
13 another hearing on this at this time and instead
14 would circulate a Notice of Hearing based on --
15 based on the filings.

16 So with that, we'll continue this
17 matter without a date and I'll look to the parties
18 to make the filings.

19 Is there anything further for today
20 from either of the parties?

21 MS. ZIAJA: No.

22 MS. TRIPLETT: Shaking head.

1 JUDGE BRODSKY: All right. Then this matter is
2 continued generally.

3 (Whereupon, the above
4 matter was adjourned
5 sine die.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22